XI-HC-22

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

(28)

आदेश पत्रक

मामला क्रमांक Cr.A.No.583/04 सन् 200

विरुद्ध

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	SB: HON'BLE SHRI DHIRENDRA MISHRA,J.	

APPELLANT Santosh Yadav, S/o Banshi Yadav, aged 25 years, R/o Bhurka, P.S. Navapara, Distt. Raipur (CG)

Vs

RESPONDENT State of Chhattisgarh, through P.S. Gobra Navapara, Distt. Raipur (CG)

4-10-2007

Shri C.R. Sahu, Advocate for the appellant.

Smt. Madhunisha Singh, Panel Lawyer for the respondent.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 1-7-2004 passed in Special S.T. No. 11/2003 whereby learned Special Judge, Special Court, Raipur under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short hereinafter referred to as the Act) has convicted the appellant under Section 376(1) of I.P.C. and sentenced to undergo R.I. for 10 years and with fine of Rs. 1000/-, in default of payment of fine to further undergo R.I. for two months.

3. Case of the prosecution in brief is that the prosecutrix aged 12 years lodged report against unknown person in police station Rajim on 23-11-2002 at about 9.30 P.M. that when she had gone to collect cow dung along with her younger sister Bholi and Butar towards the field at about 3.00 in the after noon a boy of 20 years, lean and thin, dark complexion came near her, started talking to her and thereafter caught her chest, gagged her mouth. After seeing this, her younger sister Bholi and Buter fled from there shouting 'thieve thieve' and the appellant forcibly committed rape with her as a result of which blood

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started oozing from her private part. Hearing her shouts, Bhuwneshwar and Santoo who were grazing their cattle nearby, chased him, however he managed to flee from there.

4. During investigation, the prosecutrix was sent for medical examination to Government Hospital, Gobra Nawapara where Dr. Puspa Guru (P.W. 14) examined her and gave her report of Ex. P-13. After arrest of the accused, test identification was conducted in presence of Executive Magistrate vide document of Ex. P-4 where the prosecutrix identified the appellant. After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class and the same was received by the learned Special Court after committal.

5. During trial, 19 witnesses were examined by the prosecution and thereafter statement of the accused was recorded in which he stated that he is aged about 25 years and he is married and while he was working in the field of Ishwari, the police took him and shown him to the prosecutrix. He is innocent and he has been falsely implicated. He also examined Dwarika (D.W. 1) in his defence. The Special Court after hearing the counsel for the parties, convicted and sentenced the appellant as mentioned in para 1 of the judgment.

6. Learned counsel for the appellant has mainly stressed upon the identification of the accused. Referring to the F.I.R. of Ex. P-3, it was argued that the prosecutrix did not recognize the appellant since before and the report against unidentified person was lodged however, after arresting the appellant, he was produced before the

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prosecutrix and only thereafter test identification parade was conducted by the Executive Magistrate and on the basis of such identification, the charge sheet was filed against the appellant. There is no reliable evidence to establish that the appellant committed rape with the prosecutrix.

7. On the other hand, learned counsel for the State has supported the impugned judgment.

8. Conviction of the appellant is based on the statement of the prosecutrix (P.W. 2), Ku. Bholi alias Sonkumari (P.W. 8) and P.W. 4 Gangabai, her mother, P.W. 10 Santosh and P.W. 16 Bhuwneshwar. The prosecutrix (P.W. 2) in her statement has deposed that on the date of incident, she had gone to collect cow dung towards field area at 12.00 noon when accused came in the field, caught her, her sister Bholi and Butar fled from there shouting 'thieve thieve'. The appellant fell her on the ground and committed rape with her after undressing her. When she raised alarm, Santosh came there and chased the accused, however the accused fled towards Bhurka. She has further stated that the accused was subsequently brought by the police and shown to her and she identified the accused. Subsequently she identified him at Navapara also. There is no suggestion by the defence in her cross-examination that there is some previous enmity or reason for falsely implicating the appellant in the present case.

9. P.W. 8 Ku. Bholi has also stated that she along with the prosecutrix and Butar had gone to collect cow dung where the accused came and caught the prosecutrix, thereafter they fled from

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there raising alarm and narrated the incident to the father of the prosecutrix who is her uncle. She has denied the suggestion that the accused did not come on the place of incident and that she has been tutored by her uncle. In the F.I.R. also the prosecutrix has given detailed description of the offender including clothes he was putting on at the time of incident and has claimed that she would identify him. P.W 10 Santosh who is an independent witness and has been figured as eye-witness, has corroborated the version of the prosecutrix and has stated that small girls from village were returning shouting from the field side and they informed that some thieve has caught the prosecutrix whereupon he went towards the field where he saw a person fleeing towards Borkha from a distance. He tried to chase him but he managed to flee. He could not see him. P.W. 16 Bhuwneshwar has also corroborated the statement of the prosecutrix in material particulars and has stated that he heard the shouts of the prosecutrix who was crying and when he went there, he saw that she was weeping and she stated that a boy has raped her. He has been cross-examined by the State with respect to the description of the person who fled from the place after rape, however the version given by this witness in chief materially corroborates the version of the prosecutrix. The version of the prosecutrix is also corroborated from the lady doctor P.W. 14 Dr. Pushpa Guru who has examined the prosecutrix and gave report of Ex. P-15 and has stated that on examination, she found that hymen of the prosecutrix was ruptured and blood was oozing from her vagina and she was

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complaining pain on touching the vagina. So far as the argument of the counsel for the appellant that the report was lodged against unidentified person, the test identification parade conducted by the Executive Magistrate has been disbelieved by the Court and therefore, on the basis of doc identification of the accused by the prosecutrix and P.W. 8 the appellant could not be convicted is concerned, there is no evidence available on record that the prosecutrix or her parents had any enmity towards the appellant to falsely implicate the appellant in the above crime. The prosecutrix has categorically stated that after the incident when the police brought the accused before her, she immediately identified him as the perpetrator of the offence and thereafter she identified him in the Court. Her statement is duly corroborated by Bholi who was present at the time of incident when the accused came there and she has also stated that the accused came there and caught the prosecutrix and thereafter both the sisters fled from there shouting.

10. On the basis of the aforesaid discussion, this Court is of the opinion that identity of the accused as perpetrator of the offence is established beyond reasonable doubt. In the result, the appeal preferred by the appellant being without substance, deserves to be dismissed and it is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

[पीछे देखें]